

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 14, 2023**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DENZEL J.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 2:22-cv-00092-MKD

ORDER DENYING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

**ECF Nos. 11, 12**

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 11, 12. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion, ECF No. 11, and grants Defendant's motion, ECF No. 12.

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<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §

1 416.902(a). Further, a district court “may not reverse an ALJ’s decision on  
2 account of an error that is harmless.” *Id.* An error is harmless “where it is  
3 inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115  
4 (quotation and citation omitted). The party appealing the ALJ’s decision generally  
5 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.  
6 396, 409-10 (2009).

### 7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within  
9 the meaning of the Social Security Act. First, the claimant must be “unable to  
10 engage in any substantial gainful activity by reason of any medically determinable  
11 physical or mental impairment which can be expected to result in death or which  
12 has lasted or can be expected to last for a continuous period of not less than twelve  
13 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
14 “of such severity that he is not only unable to do his previous work[,], but cannot,  
15 considering his age, education, and work experience, engage in any other kind of  
16 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
17 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to  
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
20 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work

1 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial  
2 gainful activity,” the Commissioner must find that the claimant is not disabled. 20  
3 C.F.R. § 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
7 “any impairment or combination of impairments which significantly limits [his or  
8 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
9 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
10 this severity threshold, however, the Commissioner must find that the claimant is  
11 not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to  
13 severe impairments recognized by the Commissioner to be so severe as to preclude  
14 a person from engaging in substantial gainful activity. 20 C.F.R. §  
15 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
16 enumerated impairments, the Commissioner must find the claimant disabled and  
17 award benefits. 20 C.F.R. § 416.920(d).

18 If the severity of the claimant’s impairment does not meet or exceed the  
19 severity of the enumerated impairments, the Commissioner must pause to assess  
20 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
3 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's  
5 RFC, the claimant is capable of performing work that he or she has performed in  
6 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
7 capable of performing past relevant work, the Commissioner must find that the  
8 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
9 performing such work, the analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's  
11 RFC, the claimant is capable of performing other work in the national economy.  
12 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
13 must also consider vocational factors such as the claimant's age, education and  
14 past work experience. *Id.* If the claimant is capable of adjusting to other work, the  
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §  
16 416.920(g)(1). If the claimant is not capable of adjusting to other work, the  
17 analysis concludes with a finding that the claimant is disabled and is therefore  
18 entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.  
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
2 capable of performing other work; and (2) such work “exists in significant  
3 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,  
4 700 F.3d 386, 389 (9th Cir. 2012).

### 5 **ALJ’S FINDINGS**

6 On November 21, 2019, Plaintiff applied for Title XVI supplemental  
7 security income benefits alleging an amended disability onset date of November  
8 21, 2019.<sup>2</sup> Tr. 15, 103, 182-90. Plaintiff also amended his application to request a  
9 closed period from November 21, 2019 to January 23, 2021. Tr. 16. The  
10 application was denied initially, and on reconsideration. Tr. 118-21, 125-27.  
11 Plaintiff appeared before an administrative law judge (ALJ) on April 19, 2021. Tr.  
12 41-64. On May 13, 2021, the ALJ denied Plaintiff’s claim. Tr. 12-26.

13 \_\_\_\_\_  
14 <sup>2</sup> Plaintiff previously applied for Title II and Title XVI benefits on December 1,  
15 2016; the application was denied initially and on reconsideration, and an ALJ  
16 denied the claim after a hearing. Tr. 68-85. Plaintiff appealed the denial to the  
17 Appeals Council, and the Appeals Council declined to review the decision. Tr. 86-  
18 88. Plaintiff appealed to this Court, and this Court denied Plaintiff’s motion for  
19 summary judgment on September 15, 2020. *Denzel J. v. Andrew M. Saul*, No.  
20 2:19-cv-00344-MKD (E.D. Wash. Sept. 15, 2020).

1 At step one of the sequential evaluation process, the ALJ found Plaintiff has  
2 not engaged in substantial gainful activity since November 21, 2019. Tr. 18. At  
3 step two, the ALJ found that Plaintiff has the following severe impairments:  
4 depression and anxiety. *Id.*

5 At step three, the ALJ found Plaintiff does not have an impairment or  
6 combination of impairments that meets or medically equals the severity of a listed  
7 impairment. *Id.* The ALJ then concluded that Plaintiff has the RFC to perform the  
8 full range of work at all exertional levels but with the following non-exertional  
9 limitations:

10 A predictable work environment with no production pace, conveyor  
11 belts, or sales quotas and only occasional and simple workplace  
12 changes, and brief superficial contact with coworkers and the general  
13 public and occasional contact with supervisors.

14 Tr. 19.

15 At step four, the ALJ found Plaintiff has no past relevant work. Tr. 22. At  
16 step five, the ALJ found that, considering Plaintiff's age, education, work  
17 experience, RFC, and testimony from the vocational expert, there were jobs that  
18 existed in significant numbers in the national economy that Plaintiff could perform,  
19 such as warehouse checker, industrial cleaner, and store laborer. Tr. 23.

20 Therefore, the ALJ concluded Plaintiff was not under a disability, as defined in the  
21 Social Security Act, from the date of the application through the date of the  
22 decision. *Id.*

1 On March 17, 2022, the Appeals Council denied review of the ALJ's  
2 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for  
3 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

#### 4 ISSUES

5 Plaintiff seeks judicial review of the Commissioner's final decision denying  
6 him supplemental security income benefits under Title XVI of the Social Security  
7 Act. Plaintiff raises the following issues for review:

- 8 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 9 2. Whether the ALJ properly evaluated the medical opinion evidence.

10 ECF No. 11 at 2.

#### 11 DISCUSSION

##### 12 A. Plaintiff's Symptom Claims

13 Plaintiff faults the ALJ for failing to rely on reasons that were clear and  
14 convincing in discrediting his symptom claims. ECF No. 11 at 4-7. An ALJ  
15 engages in a two-step analysis to determine whether to discount a claimant's  
16 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at \*2.  
17 "First, the ALJ must determine whether there is objective medical evidence of an  
18 underlying impairment which could reasonably be expected to produce the pain or  
19 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).  
20 "The claimant is not required to show that [the claimant's] impairment could



1 reasonably be expected to cause the severity of the symptom [the claimant] has  
2 alleged; [the claimant] need only show that it could reasonably have caused some  
3 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

4 Second, “[i]f the claimant meets the first test and there is no evidence of  
5 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
6 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
7 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
8 omitted). General findings are insufficient; rather, the ALJ must identify what  
9 symptom claims are being discounted and what evidence undermines these claims.  
10 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*  
11 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
12 explain why it discounted claimant’s symptom claims)). “The clear and  
13 convincing [evidence] standard is the most demanding required in Social Security  
14 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
15 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

16 Factors to be considered in evaluating the intensity, persistence, and limiting  
17 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,  
18 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
19 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
20 side effects of any medication an individual takes or has taken to alleviate pain or

1 other symptoms; 5) treatment, other than medication, an individual receives or has  
2 received for relief of pain or other symptoms; 6) any measures other than treatment  
3 an individual uses or has used to relieve pain or other symptoms; and 7) any other  
4 factors concerning an individual's functional limitations and restrictions due to  
5 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. §  
6 416.929(c). The ALJ is instructed to "consider all of the evidence in an  
7 individual's record," to "determine how symptoms limit ability to perform work-  
8 related activities." SSR 16-3p, 2016 WL 1119029, at \*2.

9       The ALJ found that Plaintiff's medically determinable impairments could  
10 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's  
11 statements concerning the intensity, persistence, and limiting effects of his  
12 symptoms were not entirely consistent with the evidence. Tr. 20.

13       *1. Work History*

14       The ALJ found Plaintiff's work history was inconsistent with his allegations.  
15 Tr. 20. Plaintiff's own perception of his ability to work is a proper consideration in  
16 when considering his symptom claims. *See Barnes v. Comm'r of Soc. Sec.*, No.  
17 2:16-cv-00402-MKD, 2018 WL 545722 (E.D. Wash. Jan. 24, 2018) ("Evidence of  
18 Plaintiff's preparedness to return to work, even if an optimistic self-assessment, is  
19 significant to the extent that the Plaintiff is willing and able to work, as that belief  
20

1 indicates her allegation of symptoms precluding work are not credible.”); *Bray v.*  
2 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (approving of  
3 ALJ’s rejection of Plaintiff’s symptom testimony in part because Plaintiff sought  
4 work during period of alleged disability). Additionally, working with an  
5 impairment supports a conclusion that the impairment is not disabling. *See Drouin*  
6 *v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir. 1992); *see also Bray*, 554 F.3d at 1227  
7 (seeking work despite impairment supports inference that impairment is not  
8 disabling).

9       While Plaintiff alleged he was unable to seek and keep a job due to his  
10 anxiety, Plaintiff started barber school in 2019 and returned to work in January  
11 2021. Tr. 20. In August 2019, Plaintiff stated he had secured a job at a barbershop  
12 that he would be able to begin after he completed barber school. Tr. 21. Plaintiff  
13 reported barber school was going well in 2019 and 2020, and he was ultimately  
14 able to complete the program and begin working in the field. Tr. 20-21. Plaintiff  
15 contends his ability to attend school and complete part-time barber training was not  
16 inconsistent with his allegations as it was only part-time education/work. ECF No.  
17 11 at 5-6. In August 2019, Plaintiff reported “I can’t pass a criminal history  
18 background check because of an outstanding warrant in Yakima. This [makes it]  
19 hard to work.” Tr. 276. In January 2021, Plaintiff reported he had to resolve legal  
20 issues and that after he completed an ankle monitoring period of three months, he

1 would have a job. Tr. 21. This indicates Plaintiff would have been capable of  
2 obtaining full-time employment sooner but for his legal issues. Plaintiff also  
3 reported in November 2018 that he had been job hunting for over a year. Tr. 282.  
4 Although this was prior to the alleged onset date, the record demonstrates Plaintiff  
5 sought work before and during the relevant adjudicative period, and he obtained  
6 competitive employment. This evidence supports a finding Plaintiff believed he  
7 was able to work despite his symptoms.

8       Additionally, Plaintiff would have been able to complete his barber training  
9 even sooner than he did, as the shutdowns caused by COVID-19 caused delays in  
10 his completion of the program. Plaintiff's program temporarily closed in March  
11 2020, when Plaintiff had only 200 hours left to complete. Tr. 290. He was able to  
12 return to the program in June 2020. *Id.* He graduated in August 2020 and passed  
13 the licensure examination in September 2020. Tr. 299, 302. As such, Plaintiff was  
14 eligible to begin working in September 2020. However, he had to wait for his  
15 legal charges to be resolved as they were "keeping him from getting his license."  
16 Tr. 298. In October 2020, Plaintiff planned to end his counseling appointments  
17 because he had reached his goals. Tr. 299.

18       The ALJ reasonably found Plaintiff's allegations of disabling anxiety and  
19 fear of crowds were inconsistent with his ability to seek and obtain a job, and to  
20 attend and graduate from a training program. This was a clear and convincing

1 reason, supported by substantial evidence, to discount Plaintiff's symptom  
2 complaints.

3       2. *Inconsistent Objective Medical Evidence*

4       The ALJ found Plaintiff's allegations were inconsistent with the objective  
5 medical evidence. Tr. 20-21. An ALJ may not discredit a claimant's symptom  
6 testimony and deny benefits solely because the degree of the symptoms alleged is  
7 not supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853,  
8 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991);  
9 *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400 F.3d  
10 676, 680 (9th Cir. 2005). However, the objective medical evidence is a relevant  
11 factor, along with the medical source's information about the claimant's pain or  
12 other symptoms, in determining the severity of a claimant's symptoms and their  
13 disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2).

14       Despite Plaintiff's allegations of disabling mental health symptoms, there  
15 are minimal treatment records in the file as discussed further *infra*. The limited  
16 medical records contain largely normal findings. The ALJ noted that a December  
17 2019 examination was "entirely unremarkable," and a February 2020 examination  
18 was again unremarkable, with no significant deficits documented. Tr. 20. At  
19 Plaintiff's counseling appointments, he reported getting along well with his  
20 roommates and girlfriend, doing well in school, and obtaining a job. Tr. 20-21.

1 Plaintiff reported some anxiety symptoms, but also reported being happy and  
2 stable. Tr. 276-79, 289-91. He had improved eye contact, was more talkative, and  
3 appeared more comfortable at later appointments. *Id.* On examination, Plaintiff  
4 was cooperative, engaged, and oriented, with normal speech and thought  
5 processes, and he was able to recall items immediately and on delay, identify  
6 several current events and facts, though he reported a down, depressed, and  
7 anxious mood with a congruent affect. Tr. 285-86. At another examination, he  
8 had a normal attitude and behavior, logical speech but with some delays,  
9 moderately depressed/anxious mood and moderately constricted affect, and normal  
10 thoughts, orientation, perception, memory, fund of knowledge, concentration,  
11 abstract thought, insight, and judgment. Tr. 296-97. While Plaintiff contends the  
12 records document abnormalities, such as the delayed speech on one examination,  
13 the ALJ reasonably found the records overall documented generally normal  
14 findings. ECF No. 11 at 7. This was a clear and convincing reason, supported by  
15 substantial evidence, to reject Plaintiff's symptom claims.

### 16 3. *Lack of Treatment*

17 The ALJ found Plaintiff's lack of treatment was inconsistent with his  
18 symptom claims. Tr. 20. An unexplained, or inadequately explained, failure to  
19 seek treatment or follow a prescribed course of treatment may be considered when  
20 evaluating the claimant's subjective symptoms. *Orn v. Astrue*, 495 F.3d 625, 638

(9th Cir. 2007). And evidence of a claimant's self-limitation and lack of motivation to seek treatment are appropriate considerations in determining the credibility of a claimant's subjective symptom reports. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-66 (9th Cir. 2001). When there is no evidence suggesting that the failure to seek or participate in treatment is attributable to a mental impairment rather than a personal preference, it is reasonable for the ALJ to conclude that the level or frequency of treatment is inconsistent with the alleged severity of complaints. *Molina*, 674 F.3d at 1113-14. But when the evidence suggests lack of mental health treatment is partly due to a claimant's mental health condition, it may be inappropriate to consider a claimant's lack of mental health treatment when evaluating the claimant's failure to participate in treatment. *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). Additionally, evidence of being motivated by secondary gain is sufficient to support an ALJ's rejection of testimony evidence. *See Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992).

The ALJ found Plaintiff began treatment at Frontier Behavioral Health in late 2018 but he did not attend treatment appointments on a regular basis. Tr. 20. Plaintiff reported he was going to treatment appointments to maintain his benefits. *Id.* Plaintiff sought minimal treatment during the relevant adjudicative period. Although the closed period spans a little over a year, there are less than 40 pages of medical records in the file, and 12 of those pages are examinations for benefits.

1 Tr. 269-309. Plaintiff cancelled multiple appointments and was late to multiple  
2 appointments during the limited occasions he attended appointments. *See, e.g.*, Tr.  
3 274-75. Plaintiff contends Defendant offered post hoc reasoning, because  
4 Defendant cited to evidence that Plaintiff agreed to only monthly appointments  
5 despite a weekly appointment recommendation, but the ALJ did not cite to that  
6 evidence. ECF No. 13 at 3 (citing ECF No. 12 at 6; Tr. 279). While the ALJ did  
7 not cite to the specific cited record, the ALJ reasonably considered Plaintiff's  
8 minimal treatment.

9 Plaintiff also contends he sought treatment to manage his anxiety but  
10 concedes he reported he was attending therapy to maintain funding. ECF No. 13 at  
11 3-4. Once Plaintiff obtained work and no longer needed to receive benefits, he  
12 reported he had finished his counseling goals and his services were closed. Tr.  
13 298. Plaintiff also does not offer any reasons as to why he did not seek additional  
14 treatment and does not contend his mental health symptoms prevented him from  
15 seeking treatment. As such, the ALJ reasonably considered the Plaintiff's lack of  
16 treatment and his limited treatment being motivated by his desire to maintain  
17 benefits. This was a clear and convincing reason, supported by substantial  
18 evidence, to reject Plaintiff's symptom claims.



1           4. *Activities of Daily Living*

2           The ALJ found Plaintiff's activities of daily living were inconsistent with  
3 Plaintiff's symptom claims. Tr. 20-21. The ALJ may consider a claimant's  
4 activities that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a  
5 claimant can spend a substantial part of the day engaged in pursuits involving the  
6 performance of exertional or non-exertional functions, the ALJ may find these  
7 activities inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at  
8 603; *Molina*, 674 F.3d at 1113. "While a claimant need not vegetate in a dark  
9 room in order to be eligible for benefits, the ALJ may discount a claimant's  
10 symptom claims when the claimant reports participation in everyday activities  
11 indicating capacities that are transferable to a work setting" or when activities  
12 "contradict claims of a totally debilitating impairment." *Molina*, 674 F.3d at 1112-  
13 13.

14           Plaintiff reported playing basketball several times per week, and he built a  
15 team for Hoop Fest in 2019. Tr. 20-21. Plaintiff reported getting along well with  
16 his seven roommates, having a positive relationship with his girlfriend, and  
17 interacting with his sister two to three times per month. Tr. 20-21, 287. As  
18 discussed *supra*, he attended barber school and was able to seek and obtain a job.  
19 Plaintiff also created music on his computer, read self-help books, played video  
20 games, went skateboarding, and went for walks. *Id.*; Tr. 221, 276. In 2019,

1 Plaintiff reported he was going to be performing as an artist locally. Tr. 281.  
2 Plaintiff reported some difficulties with daily tasks, like grocery shopping, but was  
3 able to handle his personal care, medications, appointments, and some chores. Tr.  
4 293. Plaintiff did not need reminders to take medication nor to handle his personal  
5 care, he could prepare simple meals for himself, and did not need encouragement  
6 to complete chores. Tr. 219-20. Plaintiff does not address this issue. ECF Nos.  
7 11, 13.

8 The ALJ reasonably found Plaintiff's activities, particularly his ability to  
9 play a team sport in a competition, were inconsistent with his allegation of  
10 disabling anxiety that prevents him from being around crowds. This was a clear  
11 and convincing reason, supported by substantial evidence, to reject Plaintiff's  
12 symptom claims. Plaintiff is not entitled to remand on these grounds.

### 13 **B. Medical Opinion Evidence**

14 Plaintiff contends the ALJ erred in his analysis of the opinions of John  
15 Arnold, Ph.D., and Patrick Metoyer, Ph.D. ECF No. 11 at 8-15.

16 As an initial matter, for claims filed on or after March 27, 2017, new  
17 regulations apply that change the framework for how an ALJ must evaluate  
18 medical opinion evidence. *Revisions to Rules Regarding the Evaluation of*  
19 *Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20  
20 C.F.R. § 416.920c. The new regulations provide that the ALJ will no longer "give

any specific evidentiary weight...to any medical opinion(s)..." *Revisions to Rules*, 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; *see* 20 C.F.R. § 416.920c(a). Instead, an ALJ must consider and evaluate the persuasiveness of all medical opinions or prior administrative medical findings from medical sources. 20 C.F.R. § 416.920c(a)-(b). The factors for evaluating the persuasiveness of medical opinions and prior administrative medical findings include supportability, consistency, relationship with the claimant (including length of the treatment, frequency of examinations, purpose of the treatment, extent of the treatment, and the existence of an examination), specialization, and "other factors that tend to support or contradict a medical opinion or prior administrative medical finding" (including, but not limited to, "evidence showing a medical source has familiarity with the other evidence in the claim or an understanding of our disability program's policies and evidentiary requirements"). 20 C.F.R. § 416.920c(c)(1)-(5).

Supportability and consistency are the most important factors, and therefore the ALJ is required to explain how both factors were considered. 20 C.F.R. § 416.920c(b)(2). Supportability and consistency are explained in the regulations:

(1) *Supportability*. The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.

1 (2) *Consistency*. The more consistent a medical opinion(s) or prior  
2 administrative medical finding(s) is with the evidence from other  
3 medical sources and nonmedical sources in the claim, the more  
persuasive the medical opinion(s) or prior administrative medical  
finding(s) will be.

4 20 C.F.R. § 416.920c(c)(1)-(2). The ALJ may, but is not required to, explain how  
5 the other factors were considered. 20 C.F.R. § 416.920c(b)(2). However, when  
6 two or more medical opinions or prior administrative findings “about the same  
7 issue are both equally well-supported ... and consistent with the record ... but are  
8 not exactly the same,” the ALJ is required to explain how “the other most  
9 persuasive factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R.  
10 § 416.920c(b)(3).

11 The Ninth Circuit addressed the issue of whether the changes to the  
12 regulations displace the longstanding case law requiring an ALJ to provide specific  
13 and legitimate reasons to reject an examining provider’s opinion. *Woods v.*  
14 *Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new  
15 regulations eliminate any hierarchy of medical opinions, and the specific and  
16 legitimate standard no longer applies. *Id.* The Court reasoned the “relationship  
17 factors” remain relevant under the new regulations, and thus the ALJ can still  
18 consider the length and purpose of the treatment relationship, the frequency of  
19 examinations, the kinds and extent of examinations that the medical source has  
20 performed or ordered from specialists, and whether the medical source has

1 examined the claimant or merely reviewed the claimant's records. *Id.* at 792.  
2 However, the ALJ is not required to make specific findings regarding the  
3 relationship factors. *Id.* Even under the new regulations, an ALJ must provide an  
4 explanation supported by substantial evidence when rejecting an examining or  
5 treating doctor's opinion as unsupported or inconsistent. *Id.*

6 *1. Dr. Arnold*

7 On December 18, 2019, Dr. Arnold, an examining source, conducted a  
8 psychological examination and rendered an opinion on Plaintiff's functioning. Tr.  
9 292-97. Dr. Arnold diagnosed Plaintiff with persistent depressive disorder, early  
10 onset, moderate; alcohol use disorder, severe, in substantial remission; cocaine use  
11 disorder, severe, in substantial remission; cannabis use disorder, severe, in  
12 substantial remission; anxiolytic use disorder, severe, in substantial remission;  
13 unspecified anxiety disorder with generalized anxiety disorder and panic features;  
14 and rule out borderline intellectual functioning. Tr. 294. Dr. Arnold opined  
15 Plaintiff has no to mild limitations in his ability to understand, remember, and  
16 persist in tasks by following very short and simple instructions, make simple work-  
17 related decisions, and ask simple questions or request assistance; moderate  
18 limitations in his ability to understand, remember, and persist in tasks by following  
19 detailed instructions, perform activities within a schedule, maintain regular  
20 attendance, and be punctual within customary tolerances without special

1 supervision, learn new tasks, perform routine tasks without special supervision, be  
2 aware of normal hazards and take appropriate precautions, communicate and  
3 perform effectively in a work setting, maintain appropriate behavior in a work  
4 setting, and set realistic goals and plan independently; marked limitations in his  
5 ability to adapt to changes in a routine work setting; and severe limitations in his  
6 ability to complete a normal workday/workweek without interruptions from  
7 psychologically-based symptoms. Tr. 294-95. He opined Plaintiff's impairments  
8 overall have a marked impact on his functioning, and the limitations were expected  
9 to last 12 months. Tr. 295. The ALJ found Dr. Arnold's opinion was not  
10 persuasive. Tr. 21.

11 First, the ALJ found Dr. Arnold's opinion was not supported by his  
12 examination. *Id.* Supportability is one of the most important factors an ALJ must  
13 consider when determining how persuasive a medical opinion is. 20 C.F.R. §  
14 416.920c(b)(2). The more relevant objective evidence and supporting explanations  
15 that support a medical opinion, the more persuasive the medical opinion is. 20  
16 C.F.R. § 416.920c(c)(1). Dr. Arnold's examination documented Plaintiff's normal  
17 appearance, attitude, behavior, thought processes, orientation, perception, memory,  
18 fund of knowledge, concentration, and abstract thought. Tr. 296-97. Plaintiff  
19 contends Dr. Arnold's examination includes abnormalities that support his opinion,  
20 because Plaintiff had significantly delayed speech at times and his mood was

1 moderately depressed/anxious with a congruent affect. ECF No. 11 at 11 (citing  
2 Tr. 296). Despite the delays in speech depressed/anxious mood and affect,  
3 Plaintiff's testing was entirely normal.

4 Further, Dr. Arnold opined Plaintiff's impairments overall have a marked  
5 impairment on his functioning. Tr. 21, 295. However, he opined Plaintiff has all  
6 mild to moderate limitations except one marked limitation in his ability to adapt to  
7 changes in a routine work setting, and one severe limitation in his ability to  
8 complete a normal workday/workweek without interruptions from psychologically  
9 based symptoms. Tr. 294-95. The opinion that Plaintiff's impairments overall  
10 cause a marked impairment are not supported by normal testing and Dr. Arnold's  
11 own opinion that Plaintiff generally has mild to moderate limitations. As such, the  
12 ALJ reasonably found Dr. Arnold's opinion was not supported by his examination.

13 Second, the ALJ found Dr. Arnold's opinion was inconsistent with  
14 Plaintiff's ability to attend school and return to work. Tr. 21. Consistency with the  
15 other evidence is one of the most important factors in determining the  
16 persuasiveness of an opinion. 20 C.F.R. § 416.920c(b)(2). "The ALJ may reject a  
17 medical opinion that is inconsistent with the claimant's work activity." *Schultz v.*  
18 *Berryhill*, No. 3:16-cv-00757-JR, 2017 WL 2312951, at \*4 (D. Or. Apr. 21, 2017)  
19 (citing *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 692-93 (9th Cir.  
20 2009)). Dr. Arnold rendered his opinion in December 2019, and opined Plaintiff's

1 limitations would last 12 months with treatment. Tr. 21, 294-95. However,  
2 Plaintiff had already started barber school by that time and had already obtained a  
3 job offer for a job to begin after he completed schooling. Tr. 21. Plaintiff attended  
4 school, and graduated in June 2020, and passed the licensure examination in  
5 September 2020. Tr. 299, 302. Plaintiff planned to end his counseling services in  
6 October 2020 because he had reached his goals. Tr. 299. Plaintiff's inability to  
7 work from September 2020 to January 2021 appears to be due to his need to  
8 resolve his legal issues and was not due to his impairments. Tr. 298. The ALJ  
9 reasonably found Dr. Arnold's opinion was inconsistent with Plaintiff's ability to  
10 attend barber school, graduate, obtain his license, and obtain employment.

11 Plaintiff contends he was disabled for a closed period and thus Plaintiff's  
12 improvement and return to work is not inconsistent with Dr. Arnold's opinion.  
13 ECF No. 11 at 11-12. The Ninth Circuit has reasoned that work performed after  
14 the period for which a claimant is seeking disability is not a relevant consideration  
15 unless the work in question is wholly inconsistent with the claimed disability. *See*  
16 *Moore.*, 278 F.3d at 925. Here, the ALJ did not reject Dr. Arnold's opinion only  
17 because Plaintiff worked after the closed period. Rather, the ALJ found the  
18 opinion was inconsistent with Plaintiff's ability to attend barber school,  
19 successfully complete the program, and seek and obtain competitive employment.  
20 Tr. 21. Plaintiff had graduated and passed the examination months prior to his



1 return to work, which was delayed due to his legal issues. *Id.* Thus, the ALJ was  
2 considering Plaintiff's ability to complete an education program and eligibility to  
3 work and did not reject the opinion only because of work after the closed period.  
4 Further, even if the ALJ was considering the later work, it would not be an error.  
5 Plaintiff's alleged inability to be around groups and alleged disabling anxiety was  
6 wholly inconsistent with his ability to attend barber school and obtain employment  
7 in a barber shop, which requires interacting in a group setting on an ongoing basis.  
8 The ALJ did not err in his consideration of Dr. Arnold's opinion.

9       2. *Dr. Metoyer*

10       On February 15, 2020, Dr. Metoyer, an examining source, conducted a  
11 psychological examination and rendered an opinion on Plaintiff's functioning. Tr.  
12 284-89. Dr. Metoyer diagnosed Plaintiff with panic disorder; posttraumatic stress  
13 disorder; major depressive disorder, recurrent, moderate; substance use disorder, in  
14 early remission (alcohol, cocaine, opiate pills); and rule out obsessive compulsive  
15 disorder. Tr. 288. Dr. Metoyer opined Plaintiff is mildly limited in his ability to  
16 understand, remember, and persist in tasks by following detailed instructions, make  
17 simple work-related decisions, ask simple questions or request assistance,  
18 communicate and perform effectively in a work setting, maintain appropriate  
19 behavior in a work setting, set realistic goals and plan independently, and learn  
20 new tasks; he is moderately limited in his ability to interact with coworkers and the

1 public, maintain regular attendance in the workplace and be punctual within  
2 customary tolerances without special supervision, complete a normal  
3 workweek/workday without interruption from symptoms, and deal with the usual  
4 stress encountered in the workplace; and marked limitation in his ability to perform  
5 routine tasks without special supervision. Tr. 288-89. Dr. Metoyer opined  
6 Plaintiff overall exhibited a moderate severity. Tr. 289.

7       The ALJ found Dr. Metoyer's opinion was generally persuasive, but found  
8 the opinion that Plaintiff had a marked limitation in his ability to perform routine  
9 tasks without special supervision was rebutted by Plaintiff's ability to complete  
10 barber school and obtain competitive employment. Tr. 21-22. "The ALJ may  
11 reject a medical opinion that is inconsistent with the claimant's work activity."  
12 *Schultz*, No. 3:16-cv-00757-JR, 2017 WL 2312951, at \*4. As discussed *supra*, the  
13 ALJ reasonably found Plaintiff's ability to attend barber school, graduate from the  
14 program, obtain his license and seek and obtain employment was inconsistent with  
15 his allegations of disabling mental health limitations. Plaintiff contends his ability  
16 to attend barber school was not inconsistent with the opinion, but Plaintiff did not  
17 present any evidence he had special supervision to complete his barber schooling.  
18 ECF No. 11 at 14-15. Plaintiff contends the schooling did not require the same  
19 demands as competitive employment and he had instructors to help; however,

1 Plaintiff was able to graduate, complete the licensure examination, and was eligible  
2 to begin working in September 2020 but for his legal issues, as discussed *supra*.

3 Plaintiff also contends that the ALJ erred in accepting Dr. Metoyer's opinion  
4 that Plaintiff has a moderate limitation in his ability to maintain regular attendance  
5 in the workplace, without finding Plaintiff to be disabled. ECF No. 11 at 15.

6 Plaintiff contends a moderate limitation in that area of functioning is disabling. *Id.*

7 Dr. Metoyer did not define moderate limitations in his opinion, thus the ALJ

8 appropriately interpreted the opinion and translated it into vocational terms in the

9 RFC. *See Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir.

10 2015). The ALJ's interpretation of the opinion is reasonable, and when there may

11 be more than one rational interpretation of evidence, the Court must defer to the

12 ALJ's finding. *See Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th

13 Cir. 2004). Further, Plaintiff does not cite any case law nor regulation to support

14 his contention that a moderate limitation is disabling. ECF No. 11 at 15. As two

15 marked limitations, or one extreme limitation is required to meet a listing,

16 Plaintiff's contention that a single moderate limitation should be found disabling is

17 not consistent with Social Security's regulations nor relevant case law. *See* 20

18 C.F.R. § 404, Subpt. P, App. 1, § 12.00. The ALJ did not err in his consideration

19 of Dr. Metoyer's opinion.

20

1 **CONCLUSION**

2 Having reviewed the record and the ALJ's findings, the Court concludes the  
3 ALJ's decision is supported by substantial evidence and free of harmful legal error.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.

6 2. Defendant's Motion for Summary Judgment, **ECF No. 12**, is  
7 **GRANTED**.

8 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

9 The District Court Executive is directed to file this Order, provide copies to  
10 counsel, and **CLOSE THE FILE**.

11 DATED July 14, 2023.

12 s/Mary K. Dimke  
13 MARY K. DIMKE  
14 UNITED STATES DISTRICT JUDGE  
15  
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